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CHARLES ELMORE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940

No. 502

WILLIS COX, WALTER CHAPLINSKY, JOHN KONIDES, ET AL.,

Appellants,

vs.

STATE OF NEW HAMPSHIRE.

APPEAL FROM THE SUPREME COURT OF THE STATE OF NEW HAMPSHIRE.

STATEMENT OPPOSING JURISDICTION AND MOTION TO DISMISS OR AFFIRM.

THOMAS P. CHENEY,
Attorney General;
FRANK R. KENISON,
Assistant Attorney General;
J. VINCENT BRODERICK,
County Solicitor;
JEREMY R. WALDRON,
Counsel for Appellee.

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SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1940

No. 502

WILLIS COX, ET AL.,

v. *Appellants,*

THE STATE OF NEW HAMPSHIRE,

Appellee.

APPEAL FROM NEW HAMPSHIRE SUPREME COURT.

APPELLEE'S STATEMENT OPPOSING JURISDICTION.

Pursuant to Rule 12, paragraph 3, Rules of the Supreme Court of the United States, comes now the State of New Hampshire, appellee, in the above entitled case and discloses the following matter making against the jurisdiction of the Supreme Court of the United States as asserted in a statement of the basis of appellate jurisdiction filed by the appellants on the fifth day of September, 1940.

Statement of the Case.

The following statement of the case is taken from the opinion of the Supreme Court of the State of New Hampshire in *State* v. *Cox*, 90 N. H. — (decided June 20, 1940), in which case the convictions of guilty in the lower court were affirmed, exceptions overruled and the statute in question held to be constitutional under the State and Federal Constitution:

> "COMPLAINTS, for taking part in a parade or procession on public streets in the City of Manchester without license therefor as required by Statute (P. L., *c.* 145, *s.*

2), the violation of which is made a misdemeanor (*Ib.*, *s.* 5). The defendants were first found guilty by the Municipal Court of Manchester, and again, on appeal, by a jury in the Superior Court.

The defendants are believers in a form of Christianity they regard as opposed to religion. They are connected with a directing organization and call themselves Jehovah's witnesses and ordained ministers to preach the Gospel according to their views of Christianity.

On Saturday, July 8, 1939, early in the evening they met with 83 others at a hall in Manchester for the purpose of engaging in a demonstration called by them an 'information march'. They divided into groups of from 15 to 20 persons, each group proceeding to an assigned part of the business district of the city, and thence in single-file formation and 'as close together as it was possible for them to get without interfering with each other's walking' marched on the sidewalks of certain streets, some carrying placards or signs. The defendants carried signs fastened to a short staff and bearing the sentence Religion is a Snare and a Racket on one side and on the other an exhortation Serve God and Christ the King. Leaflets were also distributed by them while marching.

Manchester had a population of over 75000 in 1930, and there was testimony that on Saturday nights in an hour's time 26000 persons passed one of the intersections where the defendants marched. The marchers interfered with the normal sidewalk travel, but no technical breach of the peace occurred.

The march was a prearranged affair, and no permit for it was sought, although the defendants understood that under the statute one was required."

Argument.

(I) The appellee, The State of New Hampshire, submits that the appeal should be dismissed for want of a substantial Federal question.

Davis v. *Massachusetts*, 167 U. S. 43, 42 L. Ed. 71, 17 S. Ct. 731;

Wilson v. *Eureka City,* 173 U. S. 32, 43 L. Ed. 603, 19 S. Ct. 317;

People ex rel. Doyle v. *Atwell,* 232 N. Y. 96, 133 N. E. 364, Error Dismissed, 261 U. S. 590, 67 L. Ed. 814, 43 S. Ct. 410;

Minersville School District v. *Gobitis,* 310 U. S. —, 84 L. Ed. 993, 60 S. Ct. 1010, decided June 3, 1940.

II. The right of the State under its police power to regulate the traffic of vehicles and pedestrians, to preserve the peace and prevent disorder has never been doubted even in recent decisions of the United States Supreme Court. In *Schneider* v. *State,* 308 U. S. 147, 160, 84 L. Ed. 115, 60 S. Ct. 146, the court said:

> "Municipal authorities, as trustees for the public, have the duty to keep their communities' streets open and available for movement of people and property, the primary purpose to which the streets are dedicated."

As in *Hague* v. *Committee for Industrial Organization,* 307 U. S. 496, 515, 516, 83 L. Ed. 1423, 59 S. Ct. 954:

> "The privilege of a citizen of the United States to use the streets and parks for communication of views on national questions may be regulated in the interests of all; it is not absolute, but relative, and must be exercised in subordination to the general comfort and convenience, and in consonance with peace and good order; * * *."

It is conceded as pointed out by the court in the above cited case that it must not be abridged or denied in the guise of a police regulation. There is no evidence in the present case that such is the purpose of the statute regulating parades and the court has specifically found that it is a valid exercise of the police power and is not a guise of regulation for any other purpose.

The cases of *Carlson* v. *The People of the State of California*, 309 U. S. 106, and *Thornhill* v. *State of Alabama*, 309 U. S. 88, are to be distinguished from the instant case, inasmuch as the latter does not in any way regulate or attempt to regulate peaceful picketing nor has the Supreme Court of the State so construed it. In the *Thornhill* case the court emphasized the importance of the police power when it said "the power and the duty of the state to take adequate steps to preserve the peace and to protect the privacy, the lives and the property of its residents cannot be doubted".

The statute under attack in this case as construed by the Supreme Court of this State clearly shows it to be a proper exercise of the police power which does not unjustifiably restrict the rights of a citizen to his liberties and rights under the Fourteenth Amendment. It will be noted that the solicitation of the United States Supreme Court for protecting and upholding civil liberties as evidenced in the cases decided at the October term 1939 are necessarily confined to those police regulations that could be effectively accomplished without limiting these liberties. The instant case is thus distinguishable in that the police regulation cannot be effectively accomplished in any other manner.

It is, therefore, submitted that this appeal should be dismissed or the judgments below should be affirmed.

Respectfully,

THOMAS P. CHENEY,
Attorney General of the State of New Hampshire;
FRANK R. KENISON,
Assistant Attorney General;
J. VINCENT BRODERICK,
County Solicitor;
JEREMY R. WALDRON,
Counsel for Appellee.

September 19, 1940.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940

No. 502

WILLIS COX, ET AL.,

Appellants,

v.

THE STATE OF NEW HAMPSHIRE,

Appellee.

APPEAL FROM NEW HAMPSHIRE SUPREME COURT.

MOTION TO DISMISS OR AFFIRM.

Now comes The State of New Hampshire, the appellee, herein, by Thomas P. Cheney, its duly appointed, qualified and acting Attorney General, and moves the Supreme Court of the United States to dismiss with costs the appeal taken herein, to wit, by Willis Cox, et al., appellants, upon the following ground:

(1) There is want of a substantial Federal question.

(2) It is manifest that the only Federal questions raised by the said appeal have been so explicitly decided by the Supreme Court of the United States in accordance with the decision of the Supreme Court of the State of New Hampshire, as to foreclose further argument on the subject.

(3) It is clear that the decision of the Supreme Court of th State of New Hampshire, affirming the convictions of guilty, denying the appellants' exceptions and upholding the constitutionality of the New Hampshire statute is correct.

In the alternative, appellee moves this Court to affirm the judgment from which the appeal in the above entitled cause purports to be taken on the three grounds heretofore mentioned in the appellee's motion to dismiss.

THOMAS P. CHENEY,
Attorney General of the State of New Hampshire;
FRANK R. KENISON,
Assistant Attorney General;
J. VINCENT BRODERICK,
County Solicitor;
JEREMY R. WALDRON,
Counsel for Appellee.

September 19, 1940.

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